

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

BYRON ZULAUF

Plaintiff,

vs.

RAYMOND M. GONZALEZ AND
DTL TRANSPORTATION, LLC

Defendants.

CIVIL ACTION NO. 6:21-cv-142

JURY TRIAL REQUESTED

DEFENDANT DTL TRANSPORTATION LLC'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C §§ 1332(a), 1441, and 1446, Defendant DTL TRANSPORTATION, LLC, hereby gives notice of the removal of this cause of action to the United States District Court for the Western District of Texas, Waco Division. Defendant DTL TRANSPORTATION, LLC states as grounds for removal the following:

PROCEDURAL STATUS OF THE CASE

1. Plaintiff, BYRON ZULAUF filed this action in the 146th Judicial District Court of Bell County, Texas on December 4, 2020. It carries the case style of Cause No. 321,426-B; ***Byron Zulauf v Raymond M. Gonzalez and DTL Transportation, LLC***; In the 146th Judicial District Court of Bell County, Texas.
2. The Judicial District Clerk of Bell County, Texas issued its citation to DTL Transportation, LLC on or about December 8, 2020.¹

¹ See Ex. D (DTL Transportation, LLC was served on January 27, 2021. The undersigned has unsuccessfully attempted to obtain proof of service and docket sheet through Bell County's District Clerk. This information, if obtained, will be supplemented).

3. DTL Transportation, LLC is filing this Notice of Removal within 30 days of receipt of Plaintiff's Original Petition, which was on or about January 27, 2021, and prior to filing an Original Answer.

4. All pleadings, process, orders, and other filings in the state court action accompany this notice. *See* 28 U.S.C. § 1446(a).

5. This Notice of Removal is being filed in the record office of the Clerk of the United States District Court for the Western District of Texas, Waco Division.

6. Defendant will promptly file a copy of this Notice of Removal with the Bell County District Clerk.

BACKGROUND

7. This case arises out of a motor vehicle accident that occurred in Temple, Bell County, Texas on May 15, 2019. The drivers involved in the collision were: Plaintiff, Byron Zulauf and Defendant, Raymond M. Gonzalez. Plaintiff Byron Zulauf claims that he suffered personal injuries as a result of the alleged negligence of Defendant, Raymond M. Gonzalez.

8. Plaintiff, Byron Zulauf, currently resides in Williamson County, Texas and is a citizen of the State of Texas.

9. Defendant DTL Transportation, LLC is a corporation organized in Delaware and with its principal place of business located in the State of Florida.²

10. Defendant Raymond M. Gonzalez resides in Randleman, North Carolina and is a citizen of the State of North Carolina.

² See Ex. F (DTL Transport, LLC's Registration in Florida); See also Ex. G (DTL's 2019 Annual Report in Florida).

BASIS FOR ORIGINAL FEDERAL COURT JURISDICTION

11. Plaintiff Byron Zulauf demands judgment in an amount over \$1,000,000³ and the Plaintiff and the Defendants in this matter are citizens of different States. The district courts therefore have original jurisdiction of this matter according to 28 U.S.C § 1332(a).

PROPRIETY OF REMOVAL

12. This Notice of Removal is timely because it is filed within thirty (30) days of Defendant DTL Transportation, LLC's receipt of the Plaintiff's Original Petition, in accordance with 28 U.S.C § 1446(b).

13. On information and belief, no other defendant has been served with citation so consent to removal is unnecessary. 28 U.S.C. § 1446(b)(2)(A).

14. This court has original jurisdiction of this matter under 28 U.S.C § 1332(a).

15. Except as otherwise expressly provided by an Act of Congress, any civil action brought in a state court of which the district courts of the United States have original jurisdiction may be removed to the district court of the United States for the district and division embracing the venue where the state court action was pending. *See* 28 U.S.C § 1446(a). The state court action that is the subject of this notice of removal is pending in Bell County, Texas, which is found in the Western District of Texas, Waco Division. Therefore, venue of this removed action is proper in this Court and Division.

16. Removal is not barred by 28 U.S.C. § 1445. Defendant Raymond M. Gonzalez is not a citizen or resident of the State of Texas, so removal is not prohibited by 28 U.S.C. § 1441(b). Defendant DTL Transportation, LLC, is a corporation organized in Delaware and with its principal place of business located in the State of Florida.

³ See Ex. C (Plaintiff's Original Petition).

17. Pursuant to 28 U.S.C § 1446(a) and Rule 81 of the Federal Rules of Civil Procedure, Defendant DTL Transportation, LLC has attached hereto:

- (1) A list of all parties in the case, their party type, and the current status of the removed case;
- (2) A civil cover sheet and certified copy of the state court docket sheet; a copy of all pleadings that assert causes of action; all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court (if any);
- (3) A complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number, and part or parties represented by him or her;
- (4) A record of which parties have requested trial by jury; and
- (5) The name and address of the Court from which the case is being removed.

REQUEST FOR HEARING AND JURISDICTIONAL DISCOVERY

18. If Plaintiff Byron Zulauf contests this removal, Defendants request:

- a. A hearing regarding this Court's jurisdiction over, and the propriety of removal of, this matter;
- b. The opportunity to present evidence demonstrating the existence of federal jurisdiction and the propriety of removal; and
- c. Leave to conduct limited discovery related to those issues.

JURY DEMAND

19. Defendants demand a jury trial.

WHEREFORE, PREMISES CONSIDERED, Defendant DTL Transportation, LLC, removes the above captioned action from the 146th District Court of Bell County, Texas to the United States District Court for the Western District of Texas, Waco Division.

Respectfully submitted,

THE FUENTES FIRM, P.C.

/s/ *Juan Roberto Fuentes*

JUAN ROBERTO FUENTES
State Bar No. 24005405
AUTUMN J. DeLEE*
STATE BAR NO. 24120542
**Pending Admission to USDC-Western District*
5507 Louetta Road, Suite A
Spring, Texas 77379
Telephone: (281) 378-7640
Facsimile: (281) 378-7639
juan@fuentesfirm.com
autumn@fuentesfirm.com
ATTORNEY FOR DEFENDANT
DTL TRANSPORTATION, LLC

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per W. Dist. Tex. Loc. R. LR5.1. A true and correct copy of the foregoing Defendant's Notice of Removal was served upon counsel of record in compliance with the Federal Rules of Civil Procedure by certified mail, return receipt requested, telephonic communications, hand delivery and/or U.S. Mail on this 11th day of February 2021.

/s/ *Juan Roberto Fuentes*
JUAN ROBERTO FUENTES